IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10139 of 2005
With
SPECIAL CIVIL APPLICATION No. 10140 of 2005
With
SPECIAL CIVIL APPLICATION No. 9785 of 2005
With
SPECIAL CIVIL APPLICATION No. 9786 of 2005
With
CIVIL APPLICATION No. 7092 of 2005
In SPECIAL CIVIL APPLICATION No. 10139 of 2005
With
CIVIL APPLICATION No. 7093 of 2005
In SPECIAL CIVIL APPLICATION No. 10140 of 2005
With
CIVIL APPLICATION No. 7289 of 2005
In SPECIAL CIVIL APPLICATION No. 9786 of 2005
With
CIVIL APPLICATION No. 7290 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JABIR HUSSAIN NASIR AHMED BOGA & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 2.
MR DD VYAS, SR.ADVOCATE with MR DK PUJ and MRS NIYATI SHAH for Petitioners (S.C.A. Nos.9785/2005 and 9786/2005)
MR SN SHELAT, ADVOCATE GENERAL with MR KAMAL TRIVEDI, ADDNL.AG for Respondent(s) : 1,
MR NV ANJARIA for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MS. JUSTICE R.M.DOSHIT
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 25/10/2005

JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

The above referred Special Civil Applications Nos.10139/2005 and 10140/2005 were referred to a Larger Bench by the Bench comprising Hon'ble Mr.Justice R.S.Garg and Hon'ble Mr.Justice Ravi R.Tripathi under order dated 30th June, 2005.

The petitioners challenge the constitution of wards of Valsad Municipality under order dated 11th May, 2005 made by the Chief Election Commissioner, Gujarat State. The challenge is on various grounds stated in the writ petitions but mainly on the grounds that the constitution of wards has been made with ulterior motive, in violation of mandatory requirement of Section 7(2) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as, "**the Act of 1963**"), and that certain dubious and non-existing blocks are included/interpolated in ward No.3

though the actual population in wards No.3 is less than a thousand.

The writ petitions were contested by the Election Commission and the Government of Gujarat. A preliminary objection was raised with respect to the maintainability of the writ petitions. The Hon'ble Judges were of the opinion that delimitation cannot be challenged in an Election Petition. The Hon'ble Judges, however, observed that, "**...the matter being of public importance and is often raised before the Court, deserves to be considered by a Larger Bench. Let the matter be placed before the Hon'ble the Chief Justice for constituting appropriate Bench.**"

Pursuant to the above direction, under the order made by the Hon'ble Chief Justice, the matters were placed before us on 10th August, 2005. After some hearing the matters were allowed to stand over to 17th August, 2005. As the above Special Civil Applications Nos.9785/2005 and 9786/2005 raise identical issues, the same were also placed before us on 17th August, 2005. At the outset senior advocate Mr.D.D.Vyas appearing for the petitioners in Special Civil Applications Nos.9785/2005

and 9786/2005 requested for adjournment. However, in view of the stay against the election process granted by the Division Bench further adjournment was refused. The matters were heard and rejected and the interim relief granted in each petition was vacated for the reasons to be recorded thereafter.

We record our reasons as under:

The constitutional and statutory provisions which are relevant for the purpose of these petitions are Article 243-ZG of the Constitution of India and Clause 7A of Section 2, Sub-section (2) of Section 7 and Sub-section 5 of Section 14 of the Gujarat Municipalities Act, 1963 which read as under :

> **Article 243-ZG. Bar to interference by courts in electoral matters.**-- Notwithstanding anything in this Constitution, --
>
> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

Clause 7A of Section 2: “Election” means and includes the entire election process commencing from the division of wards and all stages culminating into election of a councillor and it is always deemed to have meant and included the entire election process as aforesaid.

7.Determination of number of councillors to be elected and determination of wards. - (1) Each Municipality shall consist of councillors chosen by direct election.

(2) Where general election is to be held immediately after, -

(i)the specification of a local area as a 'transitional area' or as the case may be, a 'smaller urban area' under article 243Q of the Constitution of India is made, or

(ii) the census is taken under the Census Act,

1948 (Act No.37 of 1948), and the relevant figures of which have been published, or

(iii) the limits of a municipal borough are altered,

(a) the State Government shall, by notification in the Official Gazette, determine the number of wards into which the municipal borough shall be divided, the number of councillors to be elected to the municipality and the number of seats to be reserved in favour of the Scheduled Castes, the Scheduled Tribes, the Backward Classes and women as provided in sub-section (3) of section 6.

(b) the State Election Commission thereafter shall carry out the determination of the boundaries of the wards and the allocation of seats reserved in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and women among the wards in the prescribed manner.

Sub-section (5) of Section 14 : Declaration in case of corrupt practice by candidate – (a) If the Judge

is satisfied---

(i)that on the date of the election, the elected candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act, or

(ii) that any corrupt practice has been committed by the elected candidate or his election agent or by any other person with the consent of the elected candidate or his election agent; or

(iii) that any nomination has been improperly rejected; or

(iv) that the result of the election, in so far as it concerns the elected candidate, has been materially affected by the improper acceptance of any nomination or by any corrupt practice committed in the interests of the elected candidate by an agent other than his election agent, or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of this Act or of any rules or orders made under this Act,

the Judge shall set aside the election of the

elected candidate and where the election is set aside, on a ground mentioned in item (i) or (ii), shall declare the candidate disqualified for the purpose of such fresh election as may be held under sub-section (2) of section 42.

Learned advocate Mr.Raval had also relied upon Articles 243-R and 243-T of the Constitution of India, Section 100 of the Representation of Peoples Act and the Delimitation of Wards and Allocation of Reserved Seats in Municipal Borough Rules, 1994 (hereinafter referred to as, **“the Rules of 1994”**).

Mr.Raval had submitted that considering the definition of the word “election” in Clause 7A of Section 2 of the Act of 1963 an election process shall start moment the census figures are declared after each census. Thus, once the figures of the census are declared no election process can be challenged except in a petition before the Election Tribunal after the election in question is completed and the election results are declared. Once the election results are declared a challenge to such election on the ground of improper delimitation or reconstitution of wards would be

impossible as, if the delimitation of any of the wards is held to be improper, the decision shall affect the election with respect to the other wards also. He has submitted that, therefore, a citizen shall have a right to challenge the delimitation made by the Election Commission right at the relevant time in a petition under Article 226 of the Constitution of India. He has submitted that the definition of the word “election” in Clause 7A of Section 2 of the Act of 1963 which takes into its sweep the declaration of wards by the Election Commission is artificial. The said definition shall not deprive a citizen or a resident or a voter from challenging the action of the Election Commission in constitution of wards. Lest it shall give an unhindered power to the Election Commission which may be abused and the order of delimitation even if capricious or whimsical would be unchallengeable. He has, therefore, submitted that the present petitions preferred under Article 226 of the Constitution of India should be entertained and considered on merits. In support of his arguments Mr.Raval has relied upon the judgments in the matters of **State of Bombay v/s. Ali Gulshan** [AIR 1955 SC 810]; of **Meghraj Kothari v/s. Delimitation Commission and others** [AIR 1967 SC 669]; of **Pampakavi Rayappa Belagali v/s.**

B.D. Jatti and others [AIR 1971 SC 1348]; of **Jashwant Singh v/s. Virender Singh and others** [AIR 1995 SC 520]; of **State of U.P. and others etc. v/s. Pradhan Sangh Kshettra Samiti and others etc.** [AIR 1995 SC 1512]; of **Smt. Sk.Khasim Bee v/s. The State Election Commissioner** [AIR 1996 A.P. 324]; of **L.Chandra Kumar v/s. Union of India and others** [AIR 1997 SC 1125]; of **Anugrah Narain Singh and another v/s. State of U.P. and others** [(1996)6 SCC 303]; of **Election Commission of India through Secretary v/s. Ashok Kumar and others** [(2000)8 SCC 216]; of **Bhaichandbhai Maganlal Shah v/s. The State of Gujarat and others** [1967 GLR 210]; of **Kanchanlal Brijlal Patel and others v/s. Keki Rustomji Davar and others** [1983(2) GLR 1377]; of **Ismail Noormohmad Mehta and others v/s. State of Gujarat and others** [1996(1) GLR 549] and of **Gohel Sunit Devshi v/s. State Election Commission and others [**2000(2) GLR 1527].

Mr.D.D.Vyas has supported Mr.Raval. He has also submitted that Article 226 of the Constitution of India confers a remedy upon a citizen and the said remedy cannot be denied. He has submitted that this is the stage when reconstitution of wards by the Chief Election Commissioner can be challenged and that a petition under

Article 226 of the Constitution of India is the only remedy available to a citizen. He has relied upon the judgments in the matters of **M.N. Bhatt & ors. v/s. State of Gujarat** [1974 GLT 172]; of **Pran Nath Bhatia and others v/s. State of Punjab and others** [AIR 1997 P&H 309] and of **V.Kunhabdulla and another v/s. State of Kerala and others** [AIR 2000 KERALA 376].

The petitions are contested by the learned Advocate General Mr.Shelat and the learned Additional Advocate General Mr.Trivedi. They have submitted that considering the definition of the word “election” the process of election shall commence with the delimitation of the wards. Once the process of election commences the remedy can be availed of after the election process is over. It is not disputed that a citizen has a right to avail of the remedy under Article 226 of the Constitution of India but not at this stage. It is submitted that even a petition under Article 226 of the Constitution of India may be availed of but not until after the election process is over. Any interference at this stage of the process of election shall be in contravention of Article 243 ZG of the Constitution of India. In support of their submissions they have relied upon the judgments in the

matters of **Durga Shankar Mehta v/s. Raghuraj Singh and others** [AIR 1954 SC 520]; of **Mohinder Singh Gill and another v/s. The Chief Election Commissioner, New Delhi and others** [AIR 1978 SC 851]; of **Lakshmi Charan Sen and others v/s. A.K.M. Hassan Uzzaman and others** [AIR 1985 SC 1233]; of **Boddula Krishnaiah & Anr. v/s. State Election Commissioner, A.P. & Ors.** [JT 1996(4) S.C. 156] and of **Manda Jaganath v/s. K.S.Rathnam and others** [AIR 2004 SC 3600].

Articles 243-P to 243-ZG under the heading “Municipalities” have been inserted in the Constitution of India by the Constitution (73rd Amendment) Act, 1992. Under the said Articles various provisions have been made concerning the municipalities : the constitution and the composition of the municipalities; the constitution and composition of wards; candidates, reservations of seats; duration of municipalities; disqualification for membership; powers, authorities and responsibilities of municipalities; power to impose taxes; finance; audit and accounts; planning, etc. Article 243-ZG imposes a bar upon a court against interfering in electoral matters except in an election petition presented in accordance with law. Section 2 of the Act of 1963 contains

definitions. Clause 7A thereof defines the word “election”. Section 7 of the Act of 1963 provides for determination of number of councillors and the wards. It, inter alia, enjoins the State Government to determine the number of wards, the number of councillors, the number of seats to be reserved in favour of the Scheduled Castes, Scheduled Tribes, the Backward Classes and the Women. It enjoins the State Election Commission to determine the boundaries of the wards and the allocation of the seats reserved in favour of the Scheduled Castes, Scheduled Tribes, Backward Classes and Women amongst the wards. Section 14 of the Act of 1963 provides for determination of validity of election. Sub-section (5) thereof imposes a duty upon a judge to set-aside the election of an elected candidate if he is satisfied of any of the matters referred to in sub-clauses (i) to (iv) of clause (a) of the said sub-section (5) of Section 14 of the Act of 1963. Clause (i) thereof refers to an elected candidate who was not qualified or was disqualified on the date of the election. Clause (ii) refers to any corrupt practice committed by the elected candidate or his election agent or by any other person with the consent of the elected candidate or his election agent. Clause (iii) refers to improper rejection of any

nomination. Whereas, clause (iv) refers to improper acceptance of any nomination, any corrupt practice, improper reception, refusal or rejection of any vote or the reception of any vote which is void or any non-compliance with the provisions of the Act or any rule or order made under the Act. Thus, the aforesaid clause (iv) enfolds all matters referred to in clauses (i), (ii) and (iii) and also the acts of commission and omission contrary to the provisions of the Act or the Rules or the orders made thereunder which have materially affected the election of the elected candidate.

We do not agree with the view expressed by the Division Bench under its reference that the interpretation of aforesaid clause (iv) shall be governed by the principle of *ejusdem generis.* The learned Single Judge of this Court has, in the matter of Ismail Noormohmad Mehta (supra), expressed a view that the election to any municipality can be challenged in an election petition referred to in Section 14 of the Act of 1963 on any of the grounds mentioned in the said Section. The Hon'ble Supreme Court in the matter of Durga Shankar Mehta (supra) has considered the amplitude of a similar provision under Section 100 of the Representation of the

People Act, 1951. The Hon'ble Court held that clause (c) **“that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form, the Tribunal shall declare the election of the returned candidate to be void”** is **“a residuary provision contemplating cases where there has been infraction of the provision of the Constitution or of the Act but which have not been specifically enumerated in the other portions of the clause.”** The Hon'ble Supreme Court had, as far back as in the matter of State of Bombay (supra), held that **“the ejusdem generis rule of construction...must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species before the rule can be applied.”**

The Rules of 1994 govern the delimitation of wards

and allocation of reserved seats. Rule 2 thereof provides that the wards shall be constituted in such a manner that the population in all the wards is as far as practical, equal and there shall not be variation by more than 10% from the average ward population. Rule 4 thereof provides for election of three councillors from each ward. Rule 5 thereof provides for reservation for women. Rule 6 thereof provides for reservation of seats for Scheduled Castes, Scheduled Tribes and Backward Classes. Rule 7 thereof provides for rotation of reservation amongst the wards. Rule 8 thereof provides for inviting suggestions from the general public and for consultation with the political parties.

As discussed hereinabove, we are of the view that sub-clause (iv) of clause (a) of sub-section (5) of Section 14 of the Act of 1963 is a residuary provision and shall take its natural meaning. The construction of the said sub-clause (iv) shall not be governed by the rule of ejusdem generis.

We have carefully considered the above referred judgments relied upon by the learned advocates. We are of the view that none of the aforesaid judgments supports

the contentions raised by Mr.Raval and Mr.Vyas. It is the consistent view of this Court and the Hon'ble Supreme Court that the bar imposed by Article 243-ZG is absolute and that the resolution of any dispute pertaining to an election which has the effect of interrupting, obstructing or protracting the election shall be postponed until after the completion of the election. The Court shall desist from making any order; interim or otherwise, which has the effect of postponement of the election. The process of election, as defined in Clause 7A of Section 2 of the Act of 1963, shall be deemed to have commenced from the date the order of delimitation of wards is made by the Election Commission of the State. Hence, once the order of delimitation of wards is made no court shall entertain any dispute concerning the delimitation of wards or any other matter concerning the election. The resolution of such disputes shall be postponed until after the election is complete.

We agree with the view expressed by the learned Single Judge in the matter of Ismail Noormohmad Mehta and others (supra). The learned Single Judge has held that, **“...Under Clause (b) of Article 243-ZG no election to any Municipality can be called in question except by an**

Election Petition. The election petition is to be provided for under a law made by the State Legislature and the challenge against the election is to be made in the manner as may be provided for under such law. Therefore, the only way in which election to any Municipality can be called in question is to resort to an Election Petition for which a provision is made in the law made by the State Legislature. This provision over-rides any other provision of the Constitution, as is clear from the opening words "Notwithstanding anything in this Constitution...." Therefore where the provisions are made by the State Legislature for an election petition, the ambit of challenge against the election to a Municipality is circumscribed by the provisions of such law made by the State Legislature. Section 14 of the said Act provides for determination of the validity of election and lays down that the validity of any election of a Councillor can be brought in question at any time within 15 days after the date of declaration of result of the election, by making an application with the District Court for the determination of such question and the Judge may after such inquiry as he deems necessary pass an order confirming or amending the declared results of the election or set aside the election. Thus, the State

Legislature has provided for filing of an election petition in which election to any Municipality can be called in question. Since reference in Article 243-ZB is to the law made by the State Legislature in context of the election of a Municipality being called in question, the concept of 'election' as incorporated in the Municipal Law becomes relevant. Therefore, definition of word “Election” incorporated in Section 2(7A) of the said Act is required to be noticed for ascertaining the ambit of a petition under Section 14 of the said Act, under which the questions regarding validity of any election of counsellors can be determined. The term “election” as defined in Section 2(7A) of the said Act reads as under: “...”In view of this definition, the election process in respect of the said Municipality has already commenced by the division of wards. Thus, since the election process has already commenced, such process cannot be called in question except by an election petition, in the manner provided for in Section 14 of the said Act and the High Court cannot entertain the petition in view of the bar imposed by Article 243-ZG on the courts to interfere in electoral matters except by the election petition.....Thus if any irregularity is committed while the election is in progress, it should be brought before

the Special Tribunal by means of the election petition and not be made a subject of dispute before the Court in view of specific provisions of Article 243-ZB of the Constitution. In the context and setting of the expression "No election to any Municipality can be called in question appearing in Article 243-ZG", it is clear that even on the ground of improper delimitation of the constituencies, election to any municipality cannot be called in question except by an election petition and in such a manner as may be provided for in the State Law. In other words, the law made by the State Legislature can be the only source of calling in question the election of any Municipality and the grounds of challenge can only the such as are provided by such law."

In the present case, though it is submitted that the meaning of the word "election" given under the above referred Clause 7A is artificial and arbitrary, the validity or legality thereof is not questioned before us. Considering the aforesaid legal position, we are of the opinion that the dispute raised by the petitioners in connection with the delimitation of wards raised in the present set of petitions shall not be entertained at this stage and the resolution of the said dispute shall be

postponed until after the election is over and the results are declared.

(B.J.Shethna, J.)

(Ms. R.M.Doshit, J.)

(M.C.Patel, J.)

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